IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 37 of 2007.

Date of decision:7.9.2007.

Dharam Pal .. ..Appellant

Versus

State of H.P. .. ..Respondent

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? No

For the appellant: Mr.Virender Thakur,Advocate.

For respondent: Mr.V.K.Verma, Addl.A.G.

Deepak Gupta, J.(oral)

This appeal is directed against the judgment of the learned Sessions Judge, Solan in Session trial No.13-S/7 of 2006 whereby the appellant-accused has been convicted for having committed offences under Section 224 of the Indian Penal Code and Section 30 of the Arms Act. He has been sentenced to undergo imprisonment of two years and to pay fine of Rs.5000/- in respect of offence under Section 324 IPC and in default of payment of fine to undergo further imprisonment of six months. In respect of the conviction under Section 30 of the Arms Act he has been directed to undergo simple imprisonment of six months and to pay fine of Rs.1000/- and in default of payment of fine to undergo further simple imprisonment of one month. Both the sentences have been ordered to run concurrently.

The prosecution case, in brief, is that the accused had consumed alcohol. Thereafter, he beat his

wife Kunti Devi, PW-2. Kunti Devi left for the house of her parents alongwith their son Dharaminder. From there she went to Baddi and then returned to the house of her parents alongwith their elder son Rajeev Kumar, PW-3. The accused came to his in-laws house on 2.1.2006 and his wife Kunti Devi returned to her matrimonial home with him alongwith her two sons.

On 3.1.2006, the accused again consumed liquor and then started beating Kunti Devi and her two sons. The wife and the two sons ran away from the house but the accused ran after them and fired a gun shot and the pellets struck the left leg of Kunti Devi and she received injuries in her left leg. Thereafter, Kunti Devi was taken first to the house of her daughter and son-in-law and thereafter to the Civil Hospital, Arki. FIR was lodged.

PW-2 Kunti Devi and PW-3 Rajeev Kumar have clearly supported the prosecution version. She has stated that on 3rd January, 2006 the accused after consuming liquor gave her beating. Thereafter, she and her sons ran from house out of the fear but the accused managed to over-power them at a place called Chunarkanata and fired a shot from his gun which struck her left leg.

PW-3 Rajeev Kumar is the son of the accused. He has also supported this version of the prosecution.

The medical evidence of Dr.Atul Bhardwaj, PW-4 also supports the prosecution version. He has stated that there is gun shot wound on the left leg of Kunti

Devi and he has issued the relevant medico legal certificate.

The version of the prosecution is corroborated by PW-1 Ramesh Kumar the photographer who took photographs of the spot. The version of the prosecution is also support by the report of the F.S.L. Junga in which the clothes of the victim have been found to have holes which could have been caused by the pellets of the gun shot.

Shri Virender Thakur, learned counsel for the appellant has argued the matter at length but has failed to show any discrepancy in the prosecution version.

The learned trial Court held that the evidence including the medical evidence did not show that the accused intended to cause death or intended to inflict injury which is sufficient in the ordinary course of nature to cause death. The injuries on the person of Smt.Kunti Devi were found to be simple in nature and, therefore, the learned trial Court rightly convicted the accused for having committed the offence under Section 324 IPC. Since the accused had mis-used the licensed arm he was also rightly convicted under Section 30 of the Arms Act.

After going through the entire evidence, I find no merit in the appeal. There is no reason to dis-believe PW-2 Kunti Devi or PW-3 Rajeev Kumar who is the son of the appellant. Their evidence is corroborated by the other evidence on record. At this stage Sh.Thakur

has made a fervent plea that the appellant is behind bars since 4th January, 2006 and has already spent more than one year and 8 months in jail. He, therefore, has prayed that the sentence may be reduced.

Keeping in view the entire facts of the case, I feel that the ends of justice would be served in case the substantive sentence imposed upon the accused is reduced to the sentence already undergone by him. He shall be liable to pay the fine if not already deposited. The appeal is partly allowed. Though the conviction of the accused is upheld, the substantive sentence of 2 years imprisonment imposed upon him for his conviction under Section 324 IPC is reduced to the period already undergone by him. It is clarified that he shall be liable to pay fine and if he fails to pay the fine he shall undergo further imprisonment of six months. In case the fine has already been deposited or is deposited now, the accused shall be released forthwith unless he has to be detained because of some other case. The Registry is directed to send a copy of this judgment to the Superintendent of the Jail concerned for immediate compliance.

September 7, 2007. **(Deepak Gupta),**
PV **Judge**